



PUBLIC NOTICE

US Army Corps
of Engineers
Albuquerque District
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Permit Application No:	Date:
2001 00326	June 21, 2001
Phone:	Suspense Date:
(505) 342-3283	N/A

In Reply Refer to:

District Engineer, ATTN: CESPA-OD-R

PUBLIC NOTICE TO STATEWIDE REGIONAL CONDITIONS TO THE NATIONWIDE PROGRAM IN THE STATE TEXAS

Summary of Action: The following regional conditions apply within the State of Texas. Appendix A contains a copy of NWP General Condition 13, Notification. Appendix B lists the U.S. Army Corps of Engineers district offices and resource agencies in the State of Texas. Appendix C shows U.S. Army Corps of Engineers District Boundaries within the State of Texas.

Introduction: On March 9, 2000, the U.S. Army Corps of Engineers (Corps) published its final notice of issuance, reissuance, and modification of the Nationwide Permits (NWP) in the Federal Register. The NWPs became effective on June 7, 2000. Anyone wishing to obtain a full text copy of the NWPs via the Internet, may do so through the Corps World Wide Web Regulatory Home Page address at <http://wetland.usace.mil/> or users can access the Federal Register through the Government Printing Office (GPO) at http://www.access.gpo.gov/su_docs/.

In a public notice issued on April 17, 1999, the Fort Worth District Engineer, proposed to use his discretionary authority to modify certain NWPs by adding statewide regional Conditions. On April 17, 2001 the South Pacific Division Engineer approved the modifications and revocation. Activities which have commenced or are under contract to commence in reliance upon a nationwide permit which has been modified or revoked will remain authorized provided the activity is complete by April 17, 2002. Permittees who believe they qualify for grandfathering may contact the appropriate Corps of Engineers, Regulatory Branch for additional information.

The following regional conditions apply throughout the State of Texas:

1. For all discharges proposed for authorization under Nationwide Permits (NWP) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40, 41, 42, 43, and 44, into the following habitat types of specific areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 13 (Notification). The Corps will coordinate with the resource agencies as specified in NWP General Condition 13(e). The habitat types or areas are:

a. Wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (Sarracenia sp.) sundews (Drosera sp.), and sphagnum moss (Sphagnum sp.)

b. Baldcypress-Tupelo Swamps: Wetlands comprised predominantly of baldcypress trees (Taxodium distichum), and water tupelo trees (Nyssa aquatica), that are occasionally or regularly flooded by fresh water. Common associates include red maple (Acer rubrum), swamp privet (Froestiera acuminata), greene ash (Fraxinus pennsylvanica) and water elm (Planera aquatica). Associated herbaceous species include lizard's tail (Saururus cernuus), water mermaid weed (Proserpinaca spp.), buttonbush (Cephalanthus occidentalis) and smartweed (Polygonum spp.). (Eyre, F.H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185)

2. For all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40-44, into the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 13. The Corps will coordinate with the resource agencies as specified in NWP General Condition 13(e).

3. For all discharges proposed for authorization under NWP43, that occur in forested wetlands, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 13. The Corps will Coordinate with the resource agencies as specified in NWP General Condition 13(e).

4. For all discharges proposed for authorization under any NWP in Dallas, Denton, and Tarrant Counties that are within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986), the applicant shall meet the criteria and follow guidelines specified in Section III of the Record of Decision for the Regional

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EIS, including the hydraulic impact requirements.

A copy of these guidelines is available upon request from the Fort Worth District and at the District website www.swf.usace.army.mil (select "Permits").

The following regional conditions apply only within the Galveston District:

5. NWP 12 shall not be used to authorize discharges within 100 feet of a seagrass bed or oyster reef.
6. For all 3-D seismic test discharges conducted within the coastal zone of Texas pursuant to NWP 6, the applicant shall notify the District Engineer in accordance with the NWP General Condition 13.
7. Nationwide Permits 7, 12, 14, 18, 19, 25, 29, 39, 40, 41, 42, 43, and 44 shall not be used to authorize discharges into the following water of the United States within the coastal zone of Texas:

a. Mangrove Marshes: Wetlands within the Texas Gulf Coastal Plain that are occasionally or regularly flooded by brackish or saline water and have more than 40 percent cover by woody plants. The dominant woody species in this environment is the black mangrove (Avicennia germinans) with a dominant herbaceous species component of smooth cordgrass (Spartina alterniflora). (Preliminary Guide to Wetlands of the Gulf Coastal Plain. 1978. Technical Report - U.S. Army Engineer Waterways Experiment Station: Y-78-5. P.O. Box 631, Vicksburg, Miss 39180.)

b. Coastal Dune Swales: "Wetlands and other waters of the United States that are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting the tidal waters of the Gulf of Mexico and adjacent to the tidal waters of bays and estuaries. Coastal dune swales are generally comprised either of impermeable muds that act as reservoirs which collect precipitation or of groundwater nourished wetlands in sandy soils. As such, they generally have a high fresh to brackish water table. Vegetation species characteristically found in coastal dune swales include but are not limited to marshhay cordgrass (Spartina patens), gulf dune paspalum

(Paspalum monostachyum), bulrush (Scirpus spp.), seashore paspalum (Paspalum vaginatum), common reed (Phragmites australis), groundsel bush (Baccharis halimifolia), rattlebush (Sesbania drummondii), camphor weed (Pluchea camphorata), smartweed (Polygonum spp.), water hyssop (Bacopa monnieri), cattail (Typha spp.), umbrella sedge (Cyperus spp.), soft rush (Juncus spp.), sedge (Carex spp.), beakrush (Rhynchospora spp.), frog-fruit (Phylla spp.), duckweed (Lemna spp.), buttonweed (Diodia virginiana), mist flower (Eupatorium coelestinum), creeping spotflower (Acnella oppositifolia var. repens), pennywort (Hydrocotyle spp.), and bushy bluestem (Andropogon glomeratus)." (U.S. Fish and Wildlife Service, Houston, Texas, and the Texas General Land Office, Austin, Texas).

Recommended Information: The Corps advises applicants to discuss projects proposed for verification under NWPs with the Corps prior to submitting their applications, when practicable. In order to expedite the verification of a NWP action, the Corps recommends that applicants requesting verification of nationwide permit authorization provide the following information to the appropriate Corps District:

- a. An indication of possible areas of all waters of the United States in the project area, including wetlands and other special aquatic sites, using the current Corps regulation and wetland delineation method.
- b. A written statement detailing why the proposed discharge must occur in a water of the United States and how adverse impacts to these waters have been avoided and minimized to the maximum extent practicable. Photographs of the project are useful.
- c. A mitigation proposal, if appropriate, that will offset the losses of waters of the United States. Vegetated buffers, such as riparian zones, should be an important part of most mitigation proposals.
- d. A summary of any prior coordination with resource agencies.
- e. For all PCNs requiring coordination with both the Corps and resource agencies, the applicant should simultaneously provide a copy of the PCN to the appropriate Corps District Engineer and to the resource agencies. The resource agencies include the U.S. Fish and Wildlife Service, U. S. Environmental Protection Agency, National Marine and Fisheries Service (when appropriate), Texas Parks and Wildlife Department,

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Texas Natural Resource Conservation Commission, Railroad Commission of Texas (when appropriate), and the Texas Historic Commission. Agency coordination is required for any NWP that results in the loss of greater than 1/2 acre of waters of the United States and NWPs referenced in regional conditions 1, 2, and 3. See Appendix B for address of the resource agencies in Texas.

f. Additional information regarding submittal information can be found at the appropriate District's website: Fort Worth www.swf.usace.army.mil (Select "Permits"), Galveston www.swg.usace.army.mil, Albuquerque www.spa.usace.army.mil/reg/, Tulsa www.swt.usace.army.mil.

General Information: The following information is provided to notify applicants of other authorizations that may be required by state agencies.

A permit may be required from the Texas Parks and Wildlife Department for disturbing or taking marl, sand, gravel, shell or mudshell, or operating in or disturbing any oyster bed or fishing water for any purpose other than that necessary or incidental to navigation or dredging under State or Federal authority.

Under State law, no person may take marl, sand, gravel, shell, or other material from any place between a seawall and the water's edge, from a beach or shoreline within 300 feet of the mean low tide, or within one-half mile of the end of any seawall, for any purpose other than that necessary or incidental to navigation or dredging under State or Federal authority.

All activities in Texas located on lands under the jurisdiction of the Texas General Land Office (GLO), 1700 North Congress Avenue, Austin, Texas 78701-1495, must have prior approval from that office. The placement of structures onto state-owned stream beds, state-owned uplands, or coastal public lands in Texas may require the issuance of a lease or easement from the GLO.

APPENDIX A

Nationwide Permit General Condition 13

13. Notification:

a. **Timing:** Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a pre-construction notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

b. Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address, and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWPs, regional general permits, or individual permits used or intended to use to authorize any part of the proposed project or any related activity; and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation,

seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14, Linear Transportation Crossings, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(7) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan.

(8) For NWP 27, Stream and Wetland Restoration, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29, Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 1/4 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less)

maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control

protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(11) For NWP 33, Temporary Construction, access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.

(13) For NWP 39, Residential, Commercial, and Institutional Developments, and NWP 42, Recreational Facilities, the PCN must include a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.

(14) For NWP 40, Agricultural Activities, the PCN must include a compensatory mitigation proposal to offset losses of waters of the United States.

(15) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.

(16) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measurement taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the names of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

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(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(19) For NWP 12, 14, 29, 39, 40, 42, 43, and 44, where proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified in FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

(c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b)(1)-(19) of General Condition 13. A letter containing the requisite information may also be used.

(d) In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse

effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either:

(1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) That the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or

(3) That the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2 acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days

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from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(9)(iii) for parcels less than 1/4 acre in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.